IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2828 OF 2005

Development Corporation of
Konkan Limited, a company registered
under the Companies Act, 1956,
having its Registered Office at
Warden House, 5th Floor, Sir
P.M.Road, Mumbai 400 001. Petitioner

vs.

Jaiprakash Udaybeer Singh,
Indian Inhabitant having his address
at Aarey Milk Colony Unit No.16,
Goregaon East, Mumbai 400 065. Respondent

Ms.Pallavi Divekar for the petitioner.

Mr.Susheel Mahadeshwar i/b.Ms.Ranjana Todankar for the respondent.

**CORAM : ANOOP V. MOHTA,J.**

**DATE OF RESERVING THE JUDGMENT : 30th July, 2007.**

**DATE OF PRONOUNCING THE JUDGEMENT: 22nd August,2007**.

**JUDGMENT:**

The petitioner Corporation is a Company registered under the Companies Act, 1956. Object of the Corporation is to promote growth and establishment of industries in Thane, Raigad, Ratnagiri and Sindhudurg. The petitioner Corporation is an undertaking of the Government of Maharashtra, with 100% share holding.

2. In or about 1979 the petitioners established a bull farm to produce pedigree bulls. A Biotic Center was

established to manufactures frozen semen doses which were sent to Konkan and other areas for breeding purposes. A nitrogen plant was set up at the center for production of liquid nitrogen which was utilized for preservation of frozen semen at various centers in Konkan areas.

3. After the transfer of one Parab, the plant was operated by J.U. Singh and three other helpers.

4. The respondent was employeed as helper. The respondent was appointed as plant operator on probation for a period of one-year from 16.07.1980.

5. The respondent was confirmed by virtue of office order No.Deck/ADM/dairy/3219 dated 29/1/1982. The respondent was placed on the basic wage scale of Rs.200-3-230-5-255-EXT-5-280. His case is that he should have been placed in the scale of Rs.290-540.

6. The post of plant operator in the organization of the petitioner falls in Class IV grade. The qualifications of the respondent are S.S.C. with a certificate from Abhinav Technical Institute (Private Institution) for completion of one month course of wireman and diploma in Refrigeration & Air Conditioning technology from Indian Technical Institute, Dadar,

Mumbai, which is not recognized by any Government.

7. The petitioner applied the pay-scales as recommended by Bhole Commission and the IVth Pay Commission to its employees. The respondent was accordingly given the corresponding pay-scale of Class IV Grade.

8. In or about April, 1988 the respondent was given additional charge of plant supervisor in the place of one Shri L.B. Parab. The respondent was therefore given additional allowance of 20%.

9. In or about 1992, after completing twelve years, without any promotion, the respondent's pay-scale was upgraded to 975-25-1150-EB-30-1660. According to him he should have been placed in 1220-1880 category.

10. The respondent by his letter dated 01.01.1992 demanded that he be given scale of 1200-1800 applicable to plant operators working with the State Government.

11. On 12.04.1993 the petitioner by letter requested the State Government to clarify the pay-scales. On 17.12.1993 the State Government by its letter informed the petitioner that there was no post of liquid plant operator in the Government Milk Scheme, nor was any such post created, hence no rules regarding the pay-scales or

educational qualifications were available with it.

12. On 15.09.1994 the State Government by its letter informed the petitioner that as the Government had not sanctioned the pay-scale of 1200-1800 to the employees of Animal Husbandry Government of Maharashtra, it would not be proper to give the said pay scales to the employees of the petitioner. It was however clarified that the subject of service conditions was within the jurisdiction of the petitioner Corporation.

13. On 4.3.2003, the petitioner addressed a similar letter to Maharahtra State Board of Technical Education and sought similar clarification.

14. On 5.4.2003 the Maharashtra State Board of Technical Education informed the petitioner that the Diploma of Refrigeration and Air-conditioning technology awarded to the respondent by Indian Technical Institute, Dadar, Mumbai is not equivalent and not recognized by the Board and that the institute is not affiliated to the Board.

15. On 7.4.2003 Development of Vocational Education and Training of State by its letter informed that Abhinav Technical Institute, Dadar, Mumbai and Indian Technical Institute Dadar Mumbai both Non-Governmental Institutes

are not recognized by Government and do not come within the purview of their Institution.

16. In or about August, 2003 the respondent filed application under section 33C(2) of the Industrial Disputes Act, 1947 being Application (IDA) No.576 of 1998 that the respondent had been wrongly fitted in the basic pay scale of Rs.200-280 as against Rs.1200-1800 and that he was entitled to the pay scale applicable to the employees of the State Government and hence he was entitled to the difference between the wage scale paid to him and the basic pay scales payable to him from July 1981 till 31st July, 1998.

17. On 28.10.2003 Written statement is filed by the petitioner. The respondent examined himself in support of the application. The petitioner examined one witness, Mr.U.D.Prabhale on its behalf. On 6th April, 2005, the learned Judge of the Eleventh Labour Court, by his judgement allowed the application.

18. Aggrieved by the judgement passed by the learned Judge of the Eleventh Labour Court, the petitioner has filed the present petition.

19. The following were the issues in the matter:

| ISSUES | FINDINGS |
|---|---|
| 1. Whether the Opponent is not an Industry? | No; It is Industry under Section 2(j) of I.D.Act,1947. |
| 2. Whether the applicant is not a "workman" in the eyes of law? | No; the applicant is workman u/s. 2(s) I.D.Act, 1947. |
| 3. Whether the petitioner proves that he is entitled to receive money/benefits from opponent being his existing right as claimed in the claim statement? | Yes; |
| 4. What order? | As per the order. |

20. The operative part of the order dated 6.4.2005 is as follows:

"1. The application of the applicant is hereby allowed.

2. It is hereby held that the applicant who works as nitrogen plant operator falling in Third category

employees was wrongly placed in wage scale contrary to the wage scales applicable to the said category of the employees in different pay commission right from IIIrd Pay Commission and therefore, he is entitled to arrears in Pay of Rs.2,13,241.30p. as claimed by the applicant vide Es.U-12 which is filed alongwith the claim application.

3. The applicant shall also entitled to receive interest at the rate of 9% p.a. on the withheld salary of Rs.2,13,241.30p. From the date of the order till realization of the said amount.

4. The opponent is hereby directed to comply the said order forthwith."

21. Section 33-C(2) of the Industrial Disputes Act, 1947 (ID Act) as relevant is reproduced as under:

> "**33C. Recovery of money due from an employer.- (1)** Where any money is due to a workman from an employer under a settlement or an award or under the provisions of Chapter VA or Chapter VB the workman himself or any other person authorised by; him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

. Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

. Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months.

. [Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extent such period by such further period as he may think fit.]

(3) ----------

(4) ----------

(5) ----------

22. The learned counsel for the petitioner basically contended that the order is not within the purview of the Labour Court in view of the following decisions of the Supreme Court and the High Courts. There was no existing or crystalised benefits/claims at any point of time though the petitioner as observed is "industry" as per section 2(j) of the ID Act and the respondent is "workman" as prayed and thereby basically restricted the

point in so far as the grant of monetary claim by holding that the respondent has existing right for the claimed amount.

23. In **the Bombay Gas Company Ltd. v. Gopal Bhiva & ors., AIR 1964 SC 752,** the Supreme Court held that the proceedings contemplated by Section 33-C(2) are analogous to execution proceedings and the Labour Court which is called upon to compute in terms of money the benefit claimed by such an industrial employee is in such cases in the position of an executing court.

24. In Chief Mining Engineer,M/s.East India Coal **Co.Ltd. vs. Rameshwar & ors., AIR 1968 SC 218, the** Supreme Court held that the right to the benefit which is sought to be computed (under section 33C(2) ) must be an existing one, that is to say already adjudicated upon or provided for and must arise in the course of and in relation to the relationship between an industrial workman and his employer.

25. In **Central Inland Water Transport Corporation Ltd. v. The workmen & anr., 1974 Lab IC 1018 = AIR 1974 SC 1604,** the Supreme Court held that the proceeding under Section 33-C(2) is in nature of an executing proceeding wherein the Labour Court calculates the amount of money due to workman from his employer or if the workman is

entitled to any benefit which is capable of being computed in terms money, the Labour Court proceeds to compute the benefit in terms of money. This computation follows upon an existing right to the money or benefit in view of its being previously adjudged or otherwise duly provided for.

26. In **M/s.Punjab Beverages Pvt.Ltd. v. Suresh Chand, AIR 1978 SC 995,** it has been held that that a proceeding under Section 33-C(2) is in nature of executive proceeding. But the right to money which is sought to be calculated or to the benefit which is sought to be computed must be an existing one, that is to say already adjudicated upon or provided for.

27. In **P.K.Singh v. P.O. & ors., AIR 1988 SC 1618,** it has been held that the workmen claimed under Section 33-C (2) that they should be classified as "B" Grade fitters even though they had been appointed as "C" grade fitter, on the ground that they had been performing the duties which were similar to the duties of "B" Grade fitters. Such a relief could not be claimed under Section 33-C(2).

28. In **Chief Superintendent, Government Live Stock Hissar v. Ramesh Kumar, 1997 SSC 363,** it is held that remedy under Section 33C(2) of the Act is available only

in those cases where there is no dispute about entitlement.

29. In **State Bank of India v. Rane Chandra Dubey, (2001) 1 SC 73,** it has been held that jurisdiction under Section 33-C(2) extends to computation of pre-existing benefit or one flowing from a pre-existing right.

30. By **Rajasthan High Court in State of Rajasthan vs. Mool Singh, 1999 LAB IC 215,** held that the issue which is not settled by adjudication nor recognized by employer-the claim cannot be entertained under Section 33C(2).

31. In **R.P.G.Cables vs. R.A.Sujan, 2002 (94) FLR 548,** it is held that under Section 33-C(2), the applicant must clearly plead the source of such right viz. a settlement, appointment order or a statute giving such a right to get claim. Whether the person is entitled to revision or not is a dispute which cannot be resolved under Section 33-C (2).

32. After considering the scheme and in view of above, the Labour Court ought not to have granted the monetary claim as prayed by the respondent. It is contrary and beyond the scope of Section 33-C(2) of the ID Act.

33. The learned counsel for the respondent has relied on **Ramkrishna Ramnath v. The State of Maharashtra & ors., 1975 LAB I.C. 1561** that the Labour Court has jurisdiction to enquire into the question as to whether the applicant was a workman within Section 2(s) of the ID Act. Such remedy is enacted to provide a speedy remedy to an individual workman. In the present case, there is no challenge raised about the decision of the Labour Court in so far as holding the respondent as "workman". The question here as agitated is the power of the Labour Court to make the necessary computation in cases where the amount/claim as raised, the equivalent salary, was not accepted or crystalised. In that case, the facts were revolving around Section 25-F and 25-FFF of the ID Act. In the present case, there was no such case of retrenchment or closure. Therefore, the said judgement is not applicable to the facts and circumstances of the present case. The facts are totally distinct and distinguishable.

34. Further reliance on **Dilip Singh Parocha & ors. v. Mahalaxmi Co-op. Housing Society Ltd. & anr., 2002(6) Bom.C.R. 581**, wherein this Court has upheld the power of the Labour Court to decide whether the applicants are not "workmen" or the employer is or is not an "Industry". As noted above, there is no such challenged raised so far as on both these counts. The challenge is

restricted only to the grant of monetary claim by declaring and/or re-assessing the wages/salary for the first time by the impugned judgement on the foundation of equal work equal pay. This judgment therefore also in no way supports the case of the respondent in view of the above decisions of the Supreme Court, as relied by the petitioner. The claim based on principle of equal pay for equal work not being a pre-existing right, same is not amenable in proceedings under Section 33-C(2) of the I.D.Act. See **Sudha Divekar x Oil & Natural Gas Commission, Bombay 1997 (3) Mah.L.J.529.**

35. Considering this, I am of the view that the Labour Court has no jurisdiction to enquire and compute the benefit claimed by the respondent. Admittedly, the benefit as granted was not in existence. The Labour Court for the first time has adjudicated upon and provided for by holding that the respondent was wrongly placed in wage scale contrary to the wage scale applicable to the said categories of the employees. Merely because it has been admitted by the witnesses of the petitioner that "In view of the Bhole Pay Commission the scale of pay were correspondingly updated". There is no clear document or material to show that the parties have recognised the crystalised entitlement. There is further nothing to show that the petitioner had adopted the Pay Scales other than the 3rd Pay

Commission. The letter dated 15.9.1994 of the Government informing to the petitioner that "the applicant cannot be granted wage scale of Rs.1200 to 1800" just cannot be overlooked. There is a statement that while formation of DCKL they have adopted the pay scales of 3rd Pay Commission and there is a Board Resolution. The letter dated 15.9.1994 of the Government with regard to the salary and academic qualification of Liquid Nitrogen Plant Operator just cannot be overlooked even by the oral evidence led by the witness of the petitioner. The reliance therefore based upon the said oral evidence, in my view, cannot be the foundation to grant the monetary claim as awarded as the issue was never concluded and/or finalised. The difference of pay scale as awarded by holding that it was improper placement is therefore un-sustainable. There was no question of granting the salary based on 4th and 5th Pay Commission. Such extension therefore even on merit is impermissible and wrong apart from that the Labour Court has no jurisdiction to adjudicate such issue under Section 33-C(2) of the ID Act.

36. Another facet that the respondent did not even qualify for Class III as he did not possess the necessary qualification is also relevant factor which was wrongly considered in favour of the respondent in view of the fact that the Plant Operator working in

Government Department. The Plant Operator working in the Government Organisation are different with regard to the qualification as well as classification of the plant operators. The finding, therefore, that "unless the petitioner can show that it had adopted a different categorisation at the time of adopting the 3rd Pay Commission's report or at any time later on and till such time, the respondent will be entitled to the pay scales fixed for Nitrogen Plant Operator" is also incorrect. The petitioner being independent organisation though it is an "Industry", yet they have their own pay scale and categorisation which cannot be compared with the pay scale and the categorisation of the State Government. This issue also therefore ought not have adjudicated and decided for the first time in an application under Section 33-C(2) of the ID Act.

37. Resultantly, the writ petition is allowed. The impugned judgement dated 6.4.2005 passed by Eleventh Labour Court, Mumbai is quashed and set aside. The respondent is at liberty to take appropriate proceeding in accordance with law to raise such monetary claims other than application under Section 33-C(2) of the ID Act.

38. No costs.

[ANOOP V. MOHTA,J.]